
Finance Committee

ESSB 5714

Brief Description: Creating a sales and use tax deferral program for solar canopies placed on large-scale commercial parking lots and other similar areas.

Sponsors: Senate Committee on Environment, Energy & Technology (originally sponsored by Senators Carlyle, Liias, Gildon, Lovelett, Mullet, Nguyen and Rolfes).

Brief Summary of Engrossed Substitute Bill

- Defers state and local sales and uses taxes on a qualified solar canopy, including labor and services rendered in the planning, installation, and construction of the project, that is located in a qualifying commercial center.
- Requires that a qualified solar canopy be at least 50,000 square feet and be capable of producing at least one megawatt of electricity.
- Reduces the amount of state sales and use tax to be repaid if the recipient complies with specified labor standards.
- Directs the Department of Revenue to stop accepting new applications for the deferral after June 30, 2032.

Hearing Date: 3/8/22

Staff: Tracey Taylor (786-7152).

Background:

Retail Sales and Use Tax.

Retail sales taxes are imposed on retail sales of most articles of tangible personal property, digital products, and some services. A retail sale is a sale to the final consumer or end user of the

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property, digital product, or service. If retail sales taxes were not collected when the user acquired the property, digital products, or services, then use tax applies to the value of property, digital product, or service when used in this state. The state, all counties, and all cities levy retail sales and use taxes. The state sales and use tax rate is 6.5 percent; local sales and use tax rates vary from 0.5 percent to 4.0 percent, depending on the location.

Tax Deferral Programs.

Several tax deferral programs in statute provide businesses the ability to postpone payment of sales and use taxes if they meet specific requirements and performance criteria. Some deferral programs require either partial or complete repayment of taxes. Once an application for a deferral program is filed and approved, businesses will be granted a tax deferral certificate which must be provided to vendors and contractors to defer sales or use tax.

Tax Preference Performance Statement.

State law provides for a range of tax preferences that confer reduced tax liability upon a designated class of taxpayer. Tax preferences include tax exclusions, deductions, exemptions, preferential tax rates, deferrals, and credits. Currently, Washington has over 650 tax preferences, including a variety of sales and use tax exemptions. Legislation that establishes or expands a tax preference must include a Tax Preference Performance Statement (TPPS) that identifies the public policy objective of the preference, as well as specific metrics that the Joint Legislative Audit and Review Committee (JLARC) can use to evaluate the effectiveness of the preference. All new tax preferences automatically expire after 10 years unless an alternative expiration date is provided.

Annual Tax Performance Reports.

Since 2003, the Legislature has required taxpayers to file the Annual Report (Report) or Annual Survey (Survey) in order to qualify for a variety of new economic development-related tax preferences, or in some cases, when extending existing preferences. As a result of legislation in 2017, the Report and Survey were consolidated into the Annual Tax Performance Report (Performance Report).

The Performance Report must include the following:

- information detailing employment and wages;
- the amount of the tax preference claimed; and
- for a person that claimed a public research institutions machinery and equipment exemption, the amount of tax exempted for each general area or category of research and development for which exempt machinery and equipment and labor and services were acquired.

All of the information in the Performance Report is subject to public disclosure upon request, except for any additional information requested by the Department of Revenue (DOR) or the Joint Legislative Audit and Review Committee (JLARC) to measure the results of, or determine eligibility for, the tax preference.

Greenhouse Gas Emissions Reporting.

The United States Environmental Protection Agency (EPA) and the Department of Ecology (Ecology) identify carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride as greenhouse gases (GHGs) because of their capacity to trap heat in the Earth's atmosphere. According to the EPA, the global warming potential (GWP) of each GHG is a function of how much of the gas is concentrated in the atmosphere, how long the gas stays in the atmosphere, and how strongly the particular gas affects global atmospheric temperatures. Under state law, the GWP of a gas is measured in terms of the equivalence to the emission of an identical volume of carbon dioxide over a 100-year timeframe (carbon dioxide equivalent or CO₂e).

Under the federal Clean Air Act, GHGs are regulated as an air pollutant and are subject to several air regulations administered by the EPA. These federal Clean Air Act regulations include a requirement that facilities and fuel suppliers whose associated annual emissions exceed 25,000 metric tons of CO₂e report their emissions to the EPA. At the state level, GHG reporting is regulated by Ecology under the state Clean Air Act. This state law requires facilities, sources, and sites whose emissions exceed 10,000 metric tons of CO₂e each year to report their annual emissions to Ecology. Distributors of gasoline, diesel, and aircraft fuel whose GHG emissions exceed 10,000 metric tons and who pay fuel taxes to the Department of Licensing (DOL) must use the fuel sale information submitted for the DOL fuel tax purposes to report to the state the GHG emissions associated with the fuel.

Ecology and the Department of Commerce must report to the Governor and Legislature by December 31 of even-numbered years regarding total GHG emissions and GHG emissions by source sector in Washington. According to the most recent Ecology data, as of 2018 the total annual GHG emissions in Washington were estimated at 99.6 million metric tons (MMT) of CO₂e. Of these emissions, 16.21 MMT, or 16.3 percent, were attributable to electricity sources.

Statewide Emissions Limits.

In 2008 Washington enacted legislation that sets a series of limits on the emission of GHGs within the state. Ecology is responsible for monitoring and tracking the state's progress toward the emission limits. In 2020 additional legislation was enacted to update the state limits to the following:

- By 2020, reduce overall emissions of GHGs in the state to 1990 levels, or 90.5 MMT.
- By 2030, reduce overall emissions of GHGs in the state to 45 percent below 1990 levels, or 50 MMT.
- By 2040, reduce overall emissions of GHGs in the state to 70 percent below 1990 levels, or 27 MMT.
- By 2050, reduce overall emissions of GHGs in the state to 95 percent below 1990 levels, or 5 MMT, and achieve net-zero GHG emissions.

Solar Energy Systems.

Under current law, a solar energy system means any device or combination of devices or elements that rely upon direct sunlight as an energy source for use in the generation of

electricity. According to the Washington State University Energy Extension Program, of the 7542 systems certified under the Renewable Energy System Incentive Program, 7146 were residential-scale solar systems.

Summary of Bill:

Tax Deferral for Eligible Investment Projects.

A deferral of sales and use taxes for eligible costs associated with the construction of a new solar canopy with an area of at least 50,000 square feet at qualifying commercial centers is authorized. The deferrals are for both state and local sales and use taxes and includes the labor and services rendered in the planning, installation, and construction of the project.

A qualifying commercial center means a property currently used for retail, industrial, office, or other commercial purposes, containing a parking area or other area dedicated for both vehicle use and placement of a solar canopy. A solar canopy is an elevated structure, or multiple structures, containing a solar energy system with a nameplate capacity of at least one megawatt of alternating current. It includes the solar energy system, power lines, and any equipment required to connect the solar canopy to the electrical grid.

Application for Deferral.

Prior to the initiation of the construction of the investment project, an application for the deferral of taxes must be submitted to the DOR. Initiation of construction means the date that building permit is issued for construction of the eligible investment project. In the case where the economic benefits are passed the lessee, initiation of construction means the date the permit is issued for the tenant improvement of the eligible investment project. Initiation of construction does not include soil testing, site clearing and grading, site preparation, or any other related activities that are initiated prior to the issuance of a building permit.

If the investment project is a phased project, "initiation of construction" applies separately to each phase.

The application, the form, and manner as prescribed by the DOR, must contain: the location of the investment project, estimated or actual costs, time schedules for completion and operation, anticipated nameplate capacity and use of electricity produced by the solar canopy, and any other information required by the DOR. The DOR must rule on the application within 60 days. A state and local sales and use tax deferral certificate must be issued for each eligible investment project. Applications may not be accepted after June 30, 2032.

Approved Deferral Applications.

The recipient of a deferral certificate must begin meaningful construction on an eligible investment project within one year of receiving the deferral certificate, unless construction was delayed due to circumstances beyond the recipient's control. Lack of funding is not considered such a circumstance. "Meaningful construction" means an active construction site, where excavation of a building site, laying of a structure foundation, or other tangible signs of

construction are taking place and that clearly show a progression in the construction process at the location designated by the taxpayer in the application for the deferral. Planning, permitting, or land clearing before excavation of the building site, without more, do not constitute meaningful construction.

Failure to begin meaningful construction on an eligible investment project within one year invalidates the tax deferral certificate. Any taxes deferred under this act are immediately due. If at the time of completion the solar canopy will produce an amount of electricity that is less than 85 percent of the nameplate capacity originally assumed, the recipient must notify the DOR and update the information originally provided in the application.

A recipient must file a complete annual tax performance report for the year the solar canopy is certified as operationally complete and for the subsequent seven years. If the solar canopy ceases to be connected to the electrical grid, the annual tax performance report is no longer required.

Repayment of Deferred Taxes.

The repayment of deferred taxes must begin in the second year after the date certified by the DOR as the date the eligible investment project is operationally complete. "Operationally complete" means the solar canopy has received its final electrical inspection and is connected to the electrical grid. The first payment is due on December 31 of the second calendar year after the certified date. Subsequent annual payments of 12.5 percent of the deferred taxes are due by December 31 for each of the following seven years. The DOR may authorize an accelerated repayment schedule upon the request of the recipient.

If the project is not operationally complete within two years of being issued the tax deferral certificate, or the DOR finds that a project is not connected to the electrical grid and producing solar energy during the year the project was certified as being operational or for any of the seven succeeding calendar years, a portion of deferred taxes is due according to a declining schedule. The DOR must assess interest at the rate provided for delinquent taxes retroactively to the date of deferral. Debt for deferred taxes is not extinguished by insolvency or other failure of the recipient. If ownership is transferred, the deferral is also transferred subject to the successor meeting the eligibility requirements for the remaining period of the deferral.

Reduction in Repayments.

A recipient will receive a reduction in the amount of deferred state and local sales and use tax to be repaid under certain conditions:

- 50 percent if the procurement and contract was from an organization owned by women, minorities, or veterans, and entities that have a history of complying with federal and state wage and hour laws; apprenticeship utilization; and preferred entry workers living in the project construction area;
- 75 percent if, in addition to the previous standard, workers on the project were compensated at prevailing wages determined by local collective bargaining; or
- 100 percent if the project is developed under a community workforce agreement or project

labor agreement.

The Department of Labor and Industries (L&I) must adopt emergency and permanent rules to define and set minimum requirements for the tiered labor standards. The L&I must also set requirements for good faith efforts under the 50 and 75 percent state sales and use tax reduction categories.

The standards for procurement from and contracts with woman and minority-owned businesses requires the recipient of the deferral to consult with the Office of Minority and Women's Business Enterprises. The recipient of the deferral must consult with the Department of Veterans Affairs under the standards for procurement from and contract with veteran-owned businesses. The L&I must consult with the Office of Minority and Women's Business Enterprises, Department of Veterans Affairs, and Washington Apprenticeship and Training Council in setting standards and good faith efforts.

Tax Preference Performance Statement.

The legislature's specific public policy objective is to incentivize the construction of solar canopies in Washington in order to reduce greenhouse gas emissions from the electricity sector and boost overall electricity supplies as the state increases the electrification of transportation and powering and heating buildings.

The (JLARC) must review the sales and use tax deferral by December 31, 2030. The review must specifically evaluate:

- the number of solar canopies constructed in the state subject to the tax deferral;
- the average and total electric output of solar canopies subject to the tax deferral;
- the total beneficiary savings from the tax preference;
- the estimated reduction in GHG emissions resulting from energy produced from solar canopies, assuming an equivalent amount of energy would have otherwise been generated through the combustion of fossil fuels; and
- any other metrics the JLARC finds relevant to the evaluation of the tax preference in meetings its public policy objectives.

The JLARC must use the information from the application compiled by the DOR and may contact recipients of the tax deferral to confirm details of their solar canopies.

The automatic 10-year expiration for tax preferences does not apply to this act.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on March 7, 2022.

Effective Date: The bill takes effect on July 1, 2022.